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May 12, 2016

Honorable Kevin Faulconer
Mayor, City of San Diego
City Administration Building
202 C Street
San Diego, CA 92101

RE: Citizens' Pension Reform Initiative

Dear Mayor Faulconer, and Members of the City Council:

This firm represents the citizen proponents of Proposition B, the Citizens' Pension Reform Initiative adopted by a vote of the people of San Diego in November of 2012. We also represent the supporters of Measure B, the pension reform measure adopted by the voters in the City of San Jose in 2012. Both Measure B and Proposition B are the subjects of litigation brought by the unions and/or the Public Employees Relations Board for the purpose of invalidating each such measure.

In a letter to you dated May 3, 2016, the attorneys representing the unions, the challengers of Proposition B, advanced a proposal whereby the outcome of the Prop B election might be compromised, or nullified, through negotiations between the unions and the City. In support of such proposal, the unions' counsel cited the San Jose case as an example of how a city and the unions could conspire to circumvent a vote of the people through negotiations. The letter failed to note a development which has occurred since its authorship. The Sixth District Court of Appeals has issued a stay order currently blocking the unions, and the City of San Jose, from proceeding with the compromise of Measure B. Your reliance upon the San Jose example would be misplaced.

The May 3 letter raises a fundamental legal issue; can the City negotiate with the unions for the purpose of negating or compromising the terms of the CPR1 without a vote of the people? The answer, as a matter of law, is a resounding "no." The City and the unions are powerless to negotiate away the terms of a measure approved by nearly 66% of the San Diego voters. The Proponents of that measure currently have standing in the pending Court of Appeals case testing the challenge of Proposition B and they will steadfastly defend the decision of the voters.

The May 3 letter from the unions poses an equally implausible alternative solution – that the City spend its public funds to undertake a collateral legal challenge of the CPR1 alleging its invalidity – the technical process is called "*quo warranto*." The remedy of *quo warranto* has always been available to the unions – a course they have chosen not to pursue because of its incredibly low

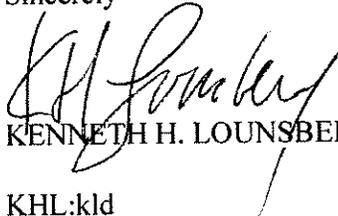
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likelihood of success. Now, the unions ask the City to spend taxpayers' money to overturn a voter-approved measure using a remedy that is virtually certain to fail.

The case currently pending before the Court of Appeals, brought by the unions challenging Proposition B, is at issue. The City and the Proponents have filed their Opening Briefs. Now, it's PERB's turn to file its brief. Instead of meeting the 35-day deadline for filing, PERB has requested an extension of the deadline, to 80 days. The reason for the extension is now obvious. The PERB and the unions hope to convince a majority of the City Council to jettison support for the voter approved pension reform measure and negotiate a compromise. Any compromise of the CPRI through negotiations is without legal support. A vote of the people of San Diego cannot be nullified by talks. Let's proceed with the case before the Court of Appeals and get a ruling from Judges on the validity of Proposition B.

Sincerely



KENNETH H. LOUNSBERY

KHL:kld

cc: Council President Sherri Lightner
Council President Pro Tem Marti Emerald
Councilmember Lori Zapf
Councilmember Todd Gloria
Councilmember Myrtle Cole
Councilmember Mark Kersey
Councilmember Chris Cate
Councilmember Scott Sherman
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Jan Goldsmith, City Attorney
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